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No. 24.

Supreme Court of the United States

OCTOBER TERM, 1938.

FRANK T. HINES, ADMINISTRATOR OF VETERANS' AFFAIRS, United States Veterans' Administration,
Petitioner,

v.

JAMES J. LOWREY, Committee of the Person and Estate of William Garmes, an Incompetent Person,
Respondent.

On Writ of Certiorari to the Supreme Court of the State of New York.

CERTIORARI GRANTED MAY 23, 1938.

RESPONDENT'S BRIEF.

WILLIAM DIKE REED,
Counsel for Respondent.

BENJAMIN C. RIBMAN,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 24.

In the Matter of the Application of James J. Lowrey, Committee of the Person and Property of William Garmes, incompetent, for an order authorizing him to pay a fee to counsel for legal services rendered the estate.

FRANK T. HINES, Administrator of Veterans' Affairs, United States Veterans' Administration,

Petitioner,

v.

JAMES J. LOWREY, Committee of the Person and Estate of William Garmes, an Incompetent Person,

Respondent.

BRIEF OF RESPONDENT.

Questions Involved.

1. Has Congress placed a restriction on the amount of a fee that may be awarded by a State Court to an attorney for services rendered on behalf of an incompetent?

2. Did Congress, in enacting Section 500, World War Veterans' Act, Section 551, Title 38, U. S. C., *intend* to restrict a State Court in this regard?

Statement of the Case.

James J. Richman, an attorney at law, was awarded a fee of $1,500 by the Supreme Court of the State of New York for services rendered by him on behalf of the estate of an incompetent veteran in connection with a claim for disability benefits arising under a policy of war risk insurance (R. 2-4). As a result of said legal services, the estate of the incompetent was awarded fixed benefits amounting to $15,840 and contingent benefits which will amount to $15,176, or a total of $31,016 (R. 66-67). The Supreme Court of the State of New York made an order confirming the report of an Official Referee recommending a fee of $1,500 for the services rendered by Mr. Richman (R. 2-4). This order was unanimously affirmed by the Appellate Division of the Supreme Court and a motion for leave to appeal to the Court of Appeals was thereafter denied by both the Appellate Division and by the Court of Appeals (R. 80-81).

At the time of the application by the committee of the incompetent to the New York Supreme Court for an allowance of a fee to his attorney, August 1st, 1936, the assets of the estate, other than those arising out of the war risk insurance recovery, amounted to about $5,000 (R. 7).

Petitioner concedes that the question of the reasonableness of the fee is not an issue before this Court and is not reviewable by it (Petitioner's Brief, p. 5).

Summary of Argument.

1. The Supreme Court of the State of New York has primary jurisdiction over the person and property of all incompetents within the State and there-

fore the act of Congress did not deprive the State Court of its jurisdiction to pass upon the reasonableness of the fee of an attorney in payment of services rendered for the benefit of an incompetent.

2. Congress, by enacting Section 500, World War Veterans' Act, did not place any limitations on the power of a State Court to allow reasonable fees for services rendered by an attorney for the benefit of the estate of an incompetent veteran.

Hines v. *Stein,* 298 U. S. 94 is controlling.

3. The authorities cited by the petitioner involve cases where Congress had the power to legislate with respect to the subject matters considered. They did not relate to subjects falling within the primary jurisdiction of the States.

4. The petitioner, the insurer, because of a conflict of interest cannot adequately protect the rights of the insured. The payment of a reasonable fee is necessary in order to enable the insured to retain independent counsel.

POINT I.

The power to regulate the fee of an attorney for services rendered to the estate of an incompetent rests primarily in the courts of the state having jurisdiction over his person and property.

When the English Chancellor exercised powers as general guardian over infants, idiots and lunatics this power was over and above the vast and extensive jurisdiction which he exercised in his judicial capacity in the Court of Chancery. This jurisdiction did not belong to the Court of Chancery as a Court of Equity but in exercising it the Chancellor was administering the prerogative and duty of the crown as *parens patriae*.

Article III, Section 2, of the Federal Constitution, which sets forth the judicial power of the Federal Government, does not embrace the powers which the King as *parens patriae* in England exercised through the Chancellor. These powers of prerogative have never been delegated by the people to the Federal Government and they remain with the States to be regulated and controlled by the State legislatures.

This doctrine is clearly elucidated in the case of *Fontain* v. *Ravenel*, 17 How. 369, 384, 392. Mr. Justice McLean, delivering the opinion of the Court, at page 384, said, that:

> "* * * when this country achieved its independence, the prerogatives of the crown devolved upon the people of the States. And this power still remains with them, except so far as they have delegated a portion of it to the federal government. The sovereign will is made known to

us by legislative enactment. The State as a sovereign, is the *parens patriae.*"

Hoadly v. *Chase,* 126 Fed. 818, 820.

In *Mormon Church* v. *United States,* 136 U. S. 1, at page 57, the Court says:

"This prerogative of *parens patriae* is inherent in the supreme power of every state, * * *"

In *United States* v. *Jackson,* 16 F. Supp. 126, the Court, relying on the foregoing authority, said at page 129:

"It is fundamental that the state is *parens patriae* of the insane."

The States never surrendered to the Federal Government their powers of prerogative over the affairs of the insane. The petitioner does not refer us to any provision in the Federal Constitution indicating any delegation by the states to the United States of power and control over the person and property of incompetents within their jurisdiction. On the contrary, the States have jealously retained this prerogative over their incompetents. In the State of New York, an elaborate system has been established by the legislature for the control of the person and property of incompetents:

N. Y. State Const. Art. VI, Sec. I;
New York Civil Practice Act, Arts. 81, 81-A;
Sporza v. *German Savings Bank,* 192 N. Y. 8.

Even if Congress had intended or had expressed its intention of assisting and advising the State Courts charged with the duty of administering the estates and

property of incompetents in regard to the fee that could be paid for services rendered by an attorney, such intention did not go to the extent of depriving the State Court of jurisdiction to pass upon the reasonableness of the fee. The Constitution of the United States does not confer upon Congress the right to exercise any of the States' powers encompassed within the prerogative of *"parens patriae"* over incompetents. Such a power is primarily within the jurisdiction of the States.

POINT II.

By enacting Section 500, World War Veterans' Act, Congress did not place any limitations on the power of a State Court to allow reasonable fees for services rendered by an attorney for the benefit of the estate of an incompetent veteran.

The doctrine of *Hines* v. *Stein,* 298 U. S. 94, controls the decision in this case. Congress in enacting Section 500, never intended to restrict a State Court in the exercise of its power to allow a reasonable fee to an attorney for services rendered in behalf of an incompetent veteran in a war risk insurance matter.

In the *Stein* case, the guardian of an incompetent veteran made an application to a Pennsylvania State Court for permission to pay an attorney a reasonable fee for legal services rendered by him and for expenses incurred in connection with the presentation before the Board of Veterans' Appeals at Washington, D. C. of a claim for pension or compensation. The Veterans' Administration did not question the reasonableness of the fee awarded by the Court, but contended that Congress, by enacting Sections 111, 114 and 115 of Title 38, U. S. C. A., had limited to $2

the fee which could be awarded to the attorney for rendering the services in question.

This Court rejected the petitioner's contention in the case of *Hines* v. *Stein,* 298 U. S. 94, and Judge McReynolds, in writing the unanimous opinion of the Court, there said at page 97:

> "It is true that the provisions cited place general restrictions upon the fees of attorneys in connection with pension matters and prescribe the method of payment. But we find nothing in any of these Acts of Congress which definitely undertakes to put limitation upon state courts in respect of guardians or to permit any executive officer, by rule or otherwise, to disregard and set at naught orders by courts to guardians appointed by them. Conflict in respect of such matters between state courts and the federal government, its officers or bureaus, would be unseemly, perhaps extremely unfortunate. And in the absence of compelling language, we cannot conclude that there was intention to create a situation where this probably would occur.
>
> "During many years, Congress has recognized the propriety if not the necessity, of entrusting the custody and management of funds belonging to incompetent pensioners to fiduciaries appointed by state courts, without seeking to limit judicial power in respect of them. * * *
>
> "Nothing brought to our attention would justify the view that Congress intended to deprive state courts of their usual authority over fiduciaries, or to sanction the promulgation of rules to that end by executive officers or bureaus.
>
> "The broad purpose of regulations in respect of fees of those concerned with pension matters is to protect the United States and beneficiaries

> against extortion, imposition or fraud. *Calhoun* v. *Massie*, 253 U. S. 170, 173, 64 L. Ed. 843, 845, 40 S. Ct. 474. Dangers of this character are not to be expected in connection with the orderly exercise of authority by state courts over appointees properly entrusted with pension funds. The purpose in view is for consideration when the true meaning of statute or rule is sought."

Sections 111, 114 and 115 of Title 38, U. S. C. A., which were involved in the *Stein* case, are similar to Section 500, World War Veterans' Act, Section 551, Title 38, U. S. C. A., involved in the case at bar. The rule of the *Stein* case, applicable to Sections 111, 114 and 115, applies with equal force to Section 500 involved in the case at bar.

The petitioner recognizes the obvious similarity between these sections. In his petition for writ of certiorari in the *Stein* case he said (p. 12):

> "So far as material to this case, the effect of said Executive Orders (Regulations) and the Instructions issued by the Administrator of Veterans' Affairs pursuant thereto with respect to limiting the amount of the fee, is in substance the same as the provisions of Section 500 of the World War Veterans' Act, 1924 (43 Stat. 628, 38 U. S. Code 551), * * * and the pension statutes mentioned above."

Every argument which the petitioner is now urging against the payment of a reasonable fee to counsel was advanced in the *Stein* case and was considered insufficient by this Court.

In the *Stein* case, as in the case at bar, petitioner urged that the fee limitation provisions of the pen-

sion acts were applicable to cases involving both competent and incompetent veterans, that Congress intended in enacting these statutes to protect all beneficiaries from extortion, imposition or fraud and that such a broad purpose should be effectuated even in cases involving estates of incompetent veterans. In answer to that argument, this Court said at page 98:

> "Dangers of this character are not to be expected in connection with the orderly exercise of authority by state courts over appointees properly entrusted with pension funds."

The Committee of the Person and Estate of William Garmes, an Incompetent Person, the respondent herein, applied to the Supreme Court of the State of New York on notice to the petitioner for an order authorizing the payment of a reasonable fee to James J. Richman, Esq., for said professional services rendered by him to the estate of the incompetent veteran (R. 13-16). The Court referred the application to an Official Referee to take testimony and to report on the nature of the services rendered and the reasonable value thereof. A hearing was had before the Referee, again on notice to petitioner, who was represented throughout by counsel (R. 54-70). The report of the Official Referee (R. 70) was thereafter submitted for approval to the Special Term of the Supreme Court—again on notice to the petitioner—and it was confirmed (R. 2-4).

The Appellate Division of the Supreme Court, on petitioner's appeal, thereafter unanimously affirmed the order entered in Special Term and the Court of Appeals refused to review (R. 80, 81). Certainly the Courts of the State of New York had ample opportunity to consider the reasonableness of the fee.

awarded to counsel and to fully protect the interests of the incompetent veteran.

The Legislature of the State of New York, at the request of the petitioner, adopted the Uniform Veterans' Guardianship Act (Article 81-A of the New York Civil Practice Act) for the very purpose of protecting the estate of incompetent veterans from unreasonable claims. The petitioner does not contend that the statute in question is at all inadequate for such purpose.

This Court recognized the fact that if a State Court were restricted to awarding a fee of $2 to an attorney for the services such as were rendered in the *Stein* case, the State Court would to this extent be precluded in its management of and control over the incompetent veteran's estate committed to its care. Such an interpretation would constitute an invasion of the sovereignty of the State by limiting the jurisdiction of its Courts and usurping this function and prerogative. The result of such restriction would in effect deny to the incompetent veteran the right to be properly represented by capable counsel. Congress, as this Court indicated in the *Stein* case, had no intention of so doing. Such intention must be expressed in clear and unequivocal language.

United States v. *Crittenden*, 24 F. Supp. 84.

There is but one point of difference between the *Stein* case and the case at bar, and that difference strengthens our contention—the *Stein* case involved a claim for pension, whereas the case at bar involves a claim under a policy of war risk insurance. The rule in the *Stein* case, applying as it does to a pension, a gratuity granted by the Government, should

therefore be the rule applicable to a policy of war risk insurance, a *contract*.

Lynch v. *United States*, 292 U. S. 571.

Certainly if a purported federal statutory restriction on the amount of a fee in a *pension* matter, which involves a *gratuity*, does not entitle the petitioner to interfere with a State Court's power to fix the amount of the payment of a reasonable fee for legal services rendered to an incompetent's estate, a similar restriction in a statute relating to war risk insurance, which involves a *contract*, has no greater force or effect.

The insured made a contract with the insurer. The *Stein* case establishes that Congress never intended that one of the terms of this contract would restrict a State Court from allowing a reasonable fee to an attorney for services rendered on behalf of an insured incompetent veteran. Mr. Richman's retainer was made subject expressly to the control of the Court which had charge of the affairs of the incompetent (R. 70).

Hines v. *Stein*, we submit, is controlling, and the order should be affirmed.

POINT III.

Concerning the authorities cited by petitioner.

The petitioner has cited many authorities which were called to this Court's attention in the *Stein* case. The cases of *Purvis* v. *United States*, 61 F. (2d) 992, and *Margolin* v. *United States*, 269 U. S. 93, cited by petitioner, do not involve incompetent veterans. Those cases which were decided prior to the *Stein* case and

are inconsistent with the rule established therein must be disregarded.

The cases of *Ball* v. *Halsell*, 161 U. S. 72, *Capital Trust* v. *Calhoun*, 250 U. S. 208 and *Calhoun* v. *Massie*, 253 U. S. 170 all involved the right of Congress to restrict fees in cases of claims asserted against the Government arising out of Indian affairs and in cases of claims for damages for property taken by the United States during the Civil War. With respect to all of these matters, Congress had the power to legislate. None of them involved an attempt by Congress to legislate with regard to the management of the estate of an incompetent, over which the States have jurisdiction as *parens patriae*.

These authorities, therefore, are not controlling and were not considered binding when called to the attention of this Court in *Hines* v. *Stein*.

In the case at bar, petitioner urged the binding force of *In re Shinberg*, 238 App. Div. 74, 263 N. Y. Supp. 354, before all the Courts of the State of New York. Not only did the decision in the *Stein* case reject the holding of the *Shinberg* case, but the Courts of the State of New York, in awarding the fee to the attorney, have deliberately overruled the authority of the *Shinberg* decision.

In the opinion in the *Shinberg* case, the Court gave expression to the view that "there may be cases where the enforcement of this statute will result in a hardship," thus recognizing the harshness of petitioner's contention. Thereafter in the case of *In re Bylow's Estate*, 153 Misc. 890, the Surrogate of Queens County in the State of New York took occasion to

comment upon the "distasteful" result which the Court felt compelled to reach in the *Shinberg* case and said at page 894 of the opinion:

> "An extreme illustration of the extent to which the courts will go in recognizing and enforcing the limitation may be found in ***Matter of Shinberg's Estate,*** 238 Appellate Division 74. The emphatic language of the statute there considered compelled the Court to reach a distasteful result."

After the decision in the *Stein* case, the Courts of the State of New York did not hesitate to reverse the ruling of the *Shinberg* case when the case at bar afforded them the opportunity.

A petition for a writ of certiorari was filed by petitioner in *Hines* v. *Copsey;* No. 946, October Term, 1937, but the writ was denied, there being no final judgment. The petitioner sought to bring up for review a decision of the highest Court of the State of California involving the identical problem presented in this case. In the *Copsey* case, the petitioner appealed to the Supreme Court of the State of California on the ground that the fee of an attorney should be limited to $10 under the provisions of Section 500, World War Veterans' Act. The guardian filed a motion to dismiss the appeal urging that the decision of this Court in the *Stein* case was controlling and hence that there was no issue before the Appellate Tribunal. The Supreme Court of the State of California refused to dismiss the appeal, holding that the incompetent, being a ward of the Court, the reasonableness of the fee was a matter properly before the State Court, *In re Copsey,* 60 Pac. (2d) 121. The

Court later, in considering the appeal on the merits said:

> "For the guidance of the probate court in arriving at the proper fee to be allowed in the instant case, it may be appropriate to say that we are of the opinion that a fee which would be allowed to an attorney for a competent veteran if a suit had been brought as set out in Section 551, Title 38, U. S. C., is the maximum fee which may be allowed, and that probably a smaller fee would be more in accordance with the merits of the case." *In re Guardianship of Copsey's Estate,* 76 Pac. (2d) 691, at 695.

It thus is clear that the Supreme Court of the State of California recognizes that Section 551, Title 38, U. S. C. A., does not apply to attorney's fees for services rendered in connection with the estates of incompetent veterans, and that an attorney who renders such services is entitled to a reasonable fee, the amount of which shall be regulated by the State Court. There is no uncertainty about the law in California on this subject.

POINT IV.

The petitioner, the *insurer*, because of a conflict of interest, cannot adequately protect the rights of the *insured*. The payment of a reasonable fee is necessary in order to enable the insured to retain independent counsel.

When the Government issued policies of war risk insurance it entered the insurance business. In consideration of the payment of premiums, the Government agreed to pay benefits upon certain contingen-

cies. Certainly, a contracting party to an agreement cannot be considered as a proper person to protect the interests of the other contracting party. That there is a conflict of interest in such a situation is clear. That such a conflict of interest necessarily prevents petitioner from protecting the interests of a holder of such a policy is apparent from what occurred in the case at bar.

Disability benefits under the policy of war risk insurance were paid to the estate of the incompetent for the first time 14 years after the policy required the petitioner so to do. During all of this period there was information available in petitioner's files which, if acted upon, would have resulted in the payment of disability benefits to the incompetent long before 1934, when payments were commenced. Petitioner, on two occasions, denied liability, claiming that the policy had lapsed on May 1, 1920 for nonpayment of premium, when in fact the policy had then matured (R. 7).

The Government does not recognize any affirmative obligation on its part to initiate a claim for benefits under such policies. Independent counsel, representing solely the interests of the insured, are essential for the proper protection of the rights of the insured under the contract. The insured will be denied the right to be properly represented by an attorney of his own selection unless he is permitted to pay such attorney a reasonable fee.

In cases involving incompetent veterans, the task of counsel is unusually difficult. The incompetent is unable to cooperate with his attorney in the preparation and presentation of his claim. This places an added burden on the attorney.

The assets of the estate in this case, other than those arising out of the war risk insurance recovery, were more than sufficient to pay the fee fixed by the Supreme Court of the State of New York (R. 7).

In view of these considerations, certainly Congress never intended that $10 should be the maximum fee payable to an attorney who rendered services which resulted in the enrichment of the estate of an incompetent veteran by a sum in excess of $31,000 in fixed and contingent benefits.

CONCLUSION.

In view of the foregoing, it is respectfully submitted that the judgment of the Appellate Division of the Supreme Court of the State of New York for the Second Department should be affirmed.

Dated, New York, N. Y., October 6th, 1938.

Respectfully submitted,

WILLIAM DIKE REED,
Counsel for Respondent.
420 Lexington Avenue.
New York City, N. Y.

BENJAMIN C. RIBMAN,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 24.—October Term, 1938.

Frank T. Hines, Administrator of Veterans' Affairs, United States Veterans' Administration, Petitioner,
vs.
James J. Lowrey, Committee of the Person and Estate of William Garmes, an Incompetent Person.

On Writ of Certiorari to the Supreme Court of the State of New York.

[November 7, 1938.]

Mr. Justice Black delivered the opinion of the Court.

Section 500 of the World War Veterans' Act[1] (as applicable here) prohibits the recognition of attorneys or claim agents in the presentation or adjudication of veterans' War Risk Insurance claims; limits to ten dollars the payment for assisting in the preparation and execution of an application to the Veterans' Bureau; permits a court—rendering a favorable judgment or decree on a veteran's claim—to allow the veteran's attorney a fee not to ex-

[1] Amount permitted to be paid agents or attorneys; solicitation, etc., of unauthorized fees or compensation; punishment. Except in the event of legal proceedings under Section 19, Title I of this Act, no claim agent or attorney except the recognized representatives of the American Red Cross, the American Legion, the Disabled American Veterans, and Veterans of Foreign Wars, and such other organizations as shall be approved by the director shall be recognized in the presentation or adjudication of claims under Parts II, III, and IV, of this Act, and payment to any attorney or agent for such assistance as may be required in the preparation and execution of the necessary papers in any application to the bureau shall not exceed $10 in any one case: *Provided, however*, That wherever a judgment or decree shall be rendered in an action brought pursuant to Section 19 of Title I of this Act, the court, as a part of its judgment or decree, shall determine and allow reasonable fees for the attorneys of the successful party or parties and apportion same if proper, said fees not to exceed 10 per centum of the amount recovered, and to be paid by the bureau out of the payments to be made under the judgment or decree at a rate not exceeding one-tenth of each of such payments until paid. Any person who shall, directly or indirectly, solicit, contract for, charge, or receive, or who shall attempt to solicit, contract for, charge, or receive, any fee or compensation, except as herein provided, shall be guilty of a misdemeanor, and for each and every offense shall be punishable by a fine or not more than $500 or by imprisonment at hard labor for not more than two years, or by both such fine and imprisonment. 43 Stat. 628, as amended 43 Stat. 1311, c. 10, 38 U. S. C. 551.

ceed ten per cent of the amount recovered; and makes soliciting or obtaining any fee greater than the statute provides a crime subject to a maximum punishment of a $500 fine and two years imprisonment.

A committee (guardian appointed by a New York state court) for an insane veteran retained an attorney to prosecute the rights of the incompetent on a War Risk Insurance contract. The New York court was petitioned for an attorney's fee of $3,000. Upon hearing, it appeared that the attorney had performed services of an investigational and preparatory nature in the prosecution of the veteran's claim; that contrary to Section 500, he had been recognized by the Bureau and permitted to join with a representative of the Disabled War Veterans in presenting the claim to the Bureau; and that subsequently, but without litigation, judicial decree or judgment against the government, the government paid the guardian an amount in excess of $10,000 on the claim. The New York court allowed a fee of $1,500 for the attorney's services, over the objection of the Administrator of Veterans' Affairs who intervened and insisted that Section 500 prohibited any fee in excess of $10 in this case.[2] We can assume, in the consideration of questions here presented, that valuable services were rendered by the attorney.

Respondent seeks to sustain the $1,500 fee upon the theory that the general power of the New York court to fix fees for services rendered an incompetent under that court's jurisdiction is not subject to the limitation of $10 for fees as provided in Section 500. He urges that the present case is controlled by the decision in *Hines* v. *Stein*, 298 U. S. 94. In that case, the Court said, "Nothing brought to our attention would justify the view that Congress intended to deprive state courts of their usual authority over fiduciaries, or to sanction the promulgation of rules to that end by executive offices or bureaus." This language did not refer to Section 500, which we now consider, but was a construction and interpretation of rules promulgated by the Administrator of Veterans' Affairs under authority of §§ 4 and 7 of an Act of March 20, 1933, c. 3, 48 Stat. 9, which rules were traceable to §§ 111, 114 and

[2] The Administrator appealed and the Appellate Division affirmed. 300 N. Y. S. 603. The Court of Appeals of New York denied the Administrator's motion for leave to appeal. 300 N. Y. 6. 1944. This Court granted certiorari, — U. S. —.

13 N.E. 2d 478.

115, Title 38, U. S. C. These Code Sections are based upon an Act passed in 1884.

Obviously, the interpretation given rules promulgated in furtherance of a line of legislation dating from 1884 cannot be accepted as controlling in determining the intent and effect of a separate and distinct act (Section 500) differing in form, substance and historical background. The rules and statutes construed in *Hines v. Stein, supra*, have no bearing on this case, which must be determined by the application of Section 500.

Section 500 is one in a series of congressional efforts to limit fees of claim agents and attorneys in the prosecution of veterans' insurance and related claims. Shortly after the United States entered the World War, Congress provided a comprehensive statutory plan of War Risk Insurance for soldiers and sailors.[3] Section 13 of that statute contained this provision: "The Director shall adopt reasonable and proper rules . . . . , to regulate the matter of the compensation, if any, but in no case to exceed ten per centum, to be paid to claim agents and attorneys for services in connection with" collection of soldiers' and sailors' benefits.

May 20, 1918, Congress amended Section 13 of the 1917 Act.[4] The House report shows that this amendment was strongly urged by the Secretary of the Treasury, then administering the World War Veterans' Act.[5] The 1918 amendment is substantially the same as Section 500, and in a case involving the meaning of that amendment this Court said, "Petitioner claims that the inhibition against receiving any sum greater than three dollars [ten dollars under Section 500] relates solely to the clerical work of filling out the form or affidavit of claim, and *does not apply to useful investigation and preparatory work such as he did*. . . .

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[3] c. 105, 40 Stat. 398 (October, 1917).

[4] c. 77, 40 Stat. 555.

[5] House Report No. 471 from the Committee on Interstate and Foreign Commerce, 65th Cong., 2nd Session. A part of the letter of the Secretary of the Treasury contained in the Report was as follows: "The evils of the situation are pressing. Unscrupulous attorneys and claim agents are circularizing prospective claimants . . . . The heartlessness and rapacity of these persons knows no bounds. In some instances their breakneck rush for employment has led them to the length of crucifying the wives and mothers of those in the service by false announcements that their husbands or sons have already fallen, and in almost all cases they are seeking to mulch the unwary out of hundreds of dollars for services that are either entirely unnecessary or would be amply remunerated by a nomipal fee." The discussions of the amendment in the House by those in charge of the bill were of the same tenor. Congressional Record, Vol. 56, Part 6, 5220-5226.

"We find no reason which would justify disregard of the plain language of the section under consideration. It declares that any person who receives a fee or compensation in respect of a claim under the Act except as therein provided shall be deemed guilty of a misdemeanor. *The only compensation which it permits a claim agent or attorney to receive where no legal proceeding has been commenced is three dollars for assistance in preparation and execution of necessary papers.* And the history of the enactment indicates plainly enough that Congress did not fail to choose apt language to express its purpose."[6] (Italics supplied.)

In 1926, Congress enacted additional legislation for the specific protection of incompetent veterans from illegal or excessive fees where guardians had been appointed by any court—State or Federal.[7] Congress declared that "whenever it appears that any guardian, curator, conservator or other person, in the opinion of the Administrator, is not properly executing or has not properly executed the duties of his trust or has collected or paid, or is attempting to collect or pay, fees, commissions or allowances that are inequitable or *in excess of those allowed by law for the duties performed* . . . , then and in that event the Administrator is empowered by his duly authorized attorney to appear *in the court which has appointed such fiduciary*, . . . and make proper presentation of such matters. . . ."[8] (Italics supplied.)

The history of Section 500 manifests beyond doubt the clear establishment of a public policy against the payment of fees for prosecution of veterans' claims in excess of those fixed by statute. Collection of a greater fee than that fixed in the statute is made a crime, and this Court has sustained a conviction under the statute.[9] Contracts for the collection of fees in excess of valid statutory limitations and for services validly prohibited by statute cannot stand, whether made with a competent veteran or the guardian of an incompetent veteran. Nor can any court having jurisdiction over an incompetent award a fee in violation of a valid statute. Congress

[6] Margolin v. United States, 269 U. S. 93, 101, 102.

[7] c. 723, 44 Stat. 792; c. 10, 38 U. S. C. 450.

[8] In 1935, Congress added the proviso that " . . . the Administrator is authorized and empowered to appear or intervene by his duly authorized attorney in any court as an interested party in any litigation instituted by himself or otherwise, directly affecting money paid to such fiduciary [guardian] under this section." c. 510, 49 Stat. 607.

[9] Margolin v. United States, *supra*.

clearly intended to protect all veterans, competent and incompetent, in all courts, State and Federal, against the imposition or payment of fees in excess of the amount fixed by statute. In furtherance of this policy the Administrator of Veterans' Affairs was charged with the express duty of appearing in all courts where it appears that "any guardian . . . . or other person . . . . is attempting to collect fees . . . in excess of those allowed by law." The progressive strengthening of this particular legislative policy precludes any probability that Congress intended to exempt mental incompetents from its protection, and Congress alone is vested with constitutional power to determine the wisdom of this policy.

Congressional enactments in pursuance of constitutional authority are the supreme law of the land. Section 500 is a valid exercise of congressional power.[10] "The laws of the United States are laws in the several states, and just as much binding on the citizens and courts thereof as the state laws are."[11]

No court has rendered a judgment or decree in favor of the incompetent veteran and against the government, in which the court as a part of its decree determined and allowed a reasonable fee for the attorney of the veteran. In the absence of such a judgment and decree an attorney's fee of more than $10 is contrary to the controlling congressional enactment. The judgment below being for more than this amount is unauthorized and the cause is

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[10] Margolin v. United States, *supra*; Calhoun v. Massie, 253 U. S. 170.
[11] Claflin v. Houseman, 93 U. S. 130, 136.